

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COURT OF APPEAL

BETWEEN:

PHUONG HUYNH

Applicant

And

THE QUEEN

Respondent

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE**

To the Registrar of Criminal Appeals:

I, PHUONG HUYNH am convicted of the following Commonwealth offences: one charge of Importing a marketable qnty of precursor – pseudoephedrine; one charge of importing tier 2 goods – firearms and ammunition; one charge of manufacturing a marketable quantity of a controlled drug – amphetamine; one charge of pre-trafficking a controlled precursor simpliciter – pseudoephedrine; and one charge of possessing drugs of dependence.

I am also convicted of the following State charges: one charge of possessing substances, materials, documents or equipment for trafficking in a drug of dependence; one charge of possessing a precursor chemical; one charge (each) of trafficking amphetamine and methylamphohetamine simpliciter; and one charge of possessing cocaine.

I am a prisoner at Margoneet Prison.

I WISH TO APPEAL to the Court of Appeal under section 283 of the *Criminal Procedure Act 2009* against my sentence (particulars of which are set out below).

TAKE NOTICE that I apply to the Court of Appeal for leave to appeal against my sentences and the ground(s) upon which I make this application are that: -

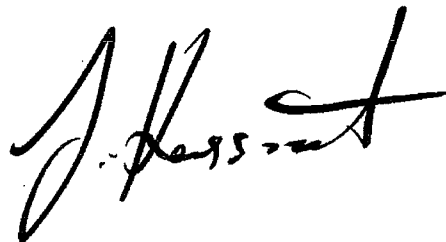
1. The sentencing discretion miscarried as a result of the manner in which the judge treated the delay between the Applicant's incarceration on remand and the final disposition of his proceedings. In particular, the judge erred by:
  - (a) having regard only to the period between November 2015 and the date of sentence in mitigation of the Applicant's penalty; and

(b) by finding that the effect of the delay upon the Applicant was 'tempered' by the Applicant's progress on remand.

2. In all the circumstances:

- (a) the individual sentences imposed on charges 1, 2 and 4 of the Commonwealth indictment;
  - (b) the individual sentences imposed on charges 3 and 4 of the State indictment;
  - (c) the overall total effective sentence; and
  - (d) the overall non-parole period fixed
- are manifestly excessive.

Date: 2<sup>nd</sup> December 2016



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Counsel briefed by:

**MICHAEL GLEESON & ASSOCIATES**

Solicitors for the Applicant

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### **PARTICULARS**

1. Appellant's name: PHYONG HUYNH
2. Offence for which convicted and sentenced in relation to which it is sought to appeal: Commonwealth charges: one charge of Importing a marketable qnty of precursor – pseudoephedrine; one charge of importing tier 2 goods – firearms and ammunition; one charge of manufacturing a marketable quantity of a controlled drug – amphetamine; one charge of pre-trafficking a controlled precursor simpliciter – pseudoephedrine; and one charge of possessing drugs of dependence.

State charges: one charge of possessing substances, materials, documents or equipment for trafficking in a drug of dependence; one charge of possessing a precursor chemical; one charge (each) of trafficking amphetamine and methylamphetamine simpliciter; and one charge of possessing cocaine.

3. Convicted at: The County Court at Melbourne
4. Sentencing Judge: His Honour Judge Gucciardo
5. Date of conviction: 24<sup>th</sup> August 2016
6. Sentence: TES – 12 years  
NPP – 8 years
7. Date of sentence: 24<sup>th</sup> August 2016
8. Name and address of legal practitioner who represented appellant at plea:  
Michael Gleeson & Associates, Suite 5, 600 Lonsdale Street, Melbourne, VIC,  
3000 T + 61 3 9670 3633| F + 61 3 9670 3699  
email: [hazel@gleesons.com.au](mailto:hazel@gleesons.com.au)
9. Name of counsel (if any) who represented appellant at the plea:  
Mr. T. Kassimatis

#### **WRITTEN CASE MUST BE ATTACHED**

1. This application for leave to appeal must be accompanied by a written case in support of the application.
2. A written case must comply with the requirements of any applicable practice direction. Practice directions may be viewed at, and downloaded from, the website of the Supreme Court of Victoria at [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au).

#### **ORAL HEARING OPTION**

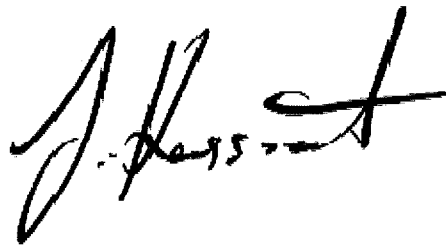
I wish to have an oral hearing of my application

I will be represented at the oral hearing by: Counsel

I do not wish to be present personally at the oral hearing.

I do not wish to appear by audio visual link at the oral hearing.

Date: 2<sup>nd</sup> December 2016



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Counsel briefed by:

**MICHAEL GLEESON & ASSOCIATES**

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**NOTES TO APPELLANT—ORAL HEARING OPTION:**

1. It is the aim of the Court of Appeal to deal with the majority of applications for leave to appeal by a single Judge of Appeal without an oral hearing. Consequently, unless you request an oral hearing, a single Judge of Appeal may determine the application on the basis of your grounds of appeal and accompanying written case without an oral hearing.
2. You may, however, request an oral hearing of your application by completing this section of this Form. This request must be confirmed to the Registrar of Criminal Appeals in writing in accordance with any applicable Practice Direction.
3. You must attach your written case in support of your application whether or not you request an oral hearing.